

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of

PUBLIC UTILITIES COMMISSION

Instituting a Proceeding to Investigate
Implementing a Decoupling Mechanism for
Hawaiian Electric Company, Inc., Hawaii Electric
Light Company, Inc., and Maui Electric Company,
Limited

DOCKET NO. 2008-0274

PUBLIC UTILITIES
COMMISSION

2008 NOV 21 P 2:31

FILED

**HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT
COMPANY, INC., AND MAUI ELECTRIC COMPANY, LIMITED'S
MEMORANDUM IN OPPOSITION TO MOTION TO INTERVENE
OF HAWAII RENEWABLE ENERGY ALLIANCE**

AND

CERTIFICATE OF SERVICE

GOODSILL ANDERSON QUINN & STIFEL
A LIMITED LIABILITY LAW PARTNERSHIP LLP

THOMAS W. WILLIAMS, JR.
PETER Y. KIKUTA
DAMON L. SCHMIDT
Alii Place, Suite 1800
1099 Alakea Street
Honolulu, Hawaii 96813
Telephone: (808) 547-5600
Facsimile: (808) 547-5880

Attorneys for
HAWAIIAN ELECTRIC COMPANY, INC.,
HAWAII ELECTRIC LIGHT COMPANY, INC., and
MAUI ELECTRIC COMPANY, LIMITED

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MEMORANDUM IN OPPOSITION TO MOTION TO INTERVENE
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HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), HAWAII ELECTRIC LIGHT
COMPANY, INC. ("HELCO"), and MAUI ELECTRIC COMPANY, LIMITED ("MECO")¹
respectfully submit this Memorandum in Opposition to Motion To Intervene of Hawaii
Renewable Energy Alliance ("HREA"), dated November 13, 2008 ("Motion").²

HREA should not be allowed to intervene as a full party in this docket, as: (1) HREA's

¹ HECO, HELCO and MECO are collectively referred to herein as the "HECO Companies" or "Companies".

² Although the Motion and attached Certificate of Service are dated November 13, 2008, the Motion was served upon HECO by mail on November 12, 2008. Hawaii Administrative Rules ("HAR") § 6-61-41(c) states: "An opposing party may serve and file counter affidavits and a written statement of reasons in opposition to the motion and of the authorities relied upon not later than five days after being served the motion" HAR § 6-61-22 states: ". . . When the prescribed time is less than seven days, Saturdays, Sundays, and holidays within the designated period shall be excluded in the computation" HAR § 6-61-21(e) states: "Whenever a party has the right to do some act or take some proceedings within a prescribed period after the service of a notice or other document upon the party and the notice or document is served upon the party by mail, two days shall be added to the prescribed period." Seven days from November 12, 2008, excluding Saturdays, Sundays and holidays, is Friday, November 21, 2008. Therefore, this Memorandum in Opposition to the Motion is timely filed. HECO was not served a file-stamped copy of HREA's Motion so does not know whether HREA's Motion was filed on November 12, 2008 (the date postmarked on the envelope) or November 13, 2008 (the date on the Motion).

contentions regarding its purported “interest” in this docket are conclusory, and do not demonstrate an interest sufficient to warrant intervention in this proceeding, the purpose of which is to investigate the use of revenue decoupling as a ratemaking mechanism for the HECO Companies; (2) HREA’s stated concerns about “access to the electricity market” are not reasonably pertinent to revenue decoupling, and addressing them in this docket could only serve to broaden the issues or delay this proceeding; and (3) HREA has not demonstrated that it possesses any expertise, knowledge or experience that could assist in the development of a sound record regarding revenue decoupling.

I. DISCUSSION

A. STANDARD FOR INTERVENTION

Motions to intervene are governed by the Rules of Practice and Procedure Before the Public Utilities Commission, Title 6, Chapter 61, HAR (the “Commission’s Rules of Practice and Procedure”), which pertain to intervention as a party as well as participation without intervention. HREA has labeled its Motion as a “Motion to Intervene” filed pursuant to HAR § 6-61-55. Under HAR § 6-61-55(a), “A person may make an application to intervene and become a party by filing a timely written motion . . . stating the facts and reasons for the proposed intervention and the position and interest of the applicant.”

The general rule with respect to intervention, as stated by the Hawaii Supreme Court, is that intervention as a party to a proceeding before the Commission “is not a matter of right but is a matter resting within the sound discretion of the Commission.” In re Hawaiian Electric Co., 56 Haw. 260, 262, 535 P.2d 1102 (1975); see Re Maui Electric Co., Docket No. 7000, Decision and Order No. 11668 (June 5, 1992) at 8; Re Hawaii Electric Light Co., Docket No. 6432, Order No. 10399 (November 24, 1989) at 5-6.

The Commission exercises its discretion by determining whether or not a movant should

be admitted as a party (or as a participant) in a proceeding. HAR § 6-61-55(d) specifically states: "Intervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented." Re Hawaii Electric Light Co., Docket No. 7259, Order No. 12893 (December 2, 1993).

In addition, HAR §§ 6-61-55(a) and (b) require a movant to "adequately state specific facts or reasons in support of its intervention." See Re Hawaiian Electric Company, Inc., Docket No. 00-0322, Order No. 18035 (September 20, 2000) ("Order 18035") at 3. "Conclusory" statements or allegations that "merely recite the various factors set forth in HAR § 6-61-55(b)" are inadequate for intervention as a party. See Order 18035 at 3.

Moreover, the Commission needs to "secure the just, speedy and inexpensive determination of every proceeding," which is the purpose of the Commission's Rules of Practice and Procedure as stated in HAR § 6-61-1. However, the "just, speedy and inexpensive determination" of a proceeding cannot be accomplished if the Commission admits every movant as a party.

Based on the standards set forth above, HREA has not justified its intervention as a full party in this docket, and thus the relief requested in its Motion should be denied.

B. BACKGROUND

In its Order Initiating Proceeding, filed October 24, 2008 in Docket No. 2008-0274 ("Initiating Order"), the Commission opened this docket for the purpose of examining the implementation of "a decoupling mechanism for the HECO Companies that would modify the traditional model of ratemaking for the HECO Companies by separating the HECO Companies' revenues and profits from electricity sales." Id. at 9, para. 1.

The Initiating Order also recognized that decoupling is, in essence, a form of ratemaking:

“Included in the [HCEI Agreement]³ is a commitment by the HECO Companies to modify their traditional rate-making model by implementing a decoupling mechanism. Generally, decoupling is a regulatory tool designed to separate a utility’s revenue from changes in energy sales.” *Id.* at 2.

Further, the Initiating Order recognized the need to expeditiously develop a decoupling mechanism to facilitate the interim decision in HECO’s 2009 test year rate case: “[T]he HECO Companies and the Consumer Advocate agreed that ‘[t]he revenues of the utility will be fully decoupled from sales/revenues beginning with the interim decision in the 2009 Hawaiian Electric Company Rate Case (most likely in the summer of 2009).’” *Id.* at 4. To that end, the Commission indicated that “to expedite this process, the commission will direct the HECO Companies and the Consumer Advocate to submit to the commission a joint proposal on decoupling that addresses all of the factors identified in their Agreement within sixty days of the date of this Order.” *Id.* at 5.

C. HREA’S MOTION TO INTERVENE SHOULD BE DENIED

1. HREA Has Not Demonstrated an Interest in Decoupling Sufficient to Warrant its Intervention in this Docket.

HAR §§ 6-61-55(b)(2), (3), and (8) require a movant seeking intervention as a party to make certain specific references regarding the movant’s purported interest in the proceeding, including references to: (1) “[t]he nature and extent of the applicant’s property, financial, and other interest in the pending matter;”⁴ (2) “[t]he effect of the pending order as to the applicant’s interest;”⁵ and (3) “[t]he extent to which the applicant’s interest in the proceeding differs from

³ The October 20, 2008 *Energy Agreement Among the State of Hawaii, Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, and Hawaiian Electric Companies* is referred to as the “HCEI Agreement”.

⁴ HAR § 6-61-55(b)(2).

⁵ HAR § 6-61-55(b)(3).

that of the general public[.]”⁶

The argument set forth in HREA’s Motion attempts to address these requirements with a single, blanket contention:

Movant’s member organizations and individuals are companies, consultants or agents involved in and/or considering manufacturing, marketing, selling, installing and maintaining renewables in Hawaii, and are concerned about access to the electricity market, including appropriate and reasonable terms and conditions in power purchase agreements. Accordingly, there are substantial financial and other interests implicated in this docket.

Motion at 3.

This wholesale contention is conclusory, and does not justify HREA’s intervention as a party in this docket. For example, beyond expressing general concerns about “access to the electricity market, including appropriate and reasonable terms and conditions in power purchase agreements” (which interest as discussed below would unduly broaden the issues in this docket), HREA’s blanket contention does not specifically identify a single: (1) property, financial, or other interest that HREA or its membership might have in the subject matter of this docket; (2) explanation of how the Commission’s decoupling investigation in this docket might have an effect on an interest of HREA or its membership; or (3) explanation of how HREA’s interest in the subject matter of this proceeding might differ from that of the general public.

Similarly, with respect to the requirement that motions refer to “[t]he extent to which the applicant’s interest will not be represented by existing parties”,⁷ HREA simply contends: “None. For example, the utilities and the Consumer Advocate cannot adequately represent the interests of HREA and its individual members.” Motion at 4. This statement is also conclusory. For example, HREA’s argument does not state a single fact or reason demonstrating why the

⁶ HAR § 6-61-55(b)(8).

⁷ HAR § 6-61-55(b)(5).

Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs (“Consumer Advocate”), which is “statutorily required to represent, protect, and advance the interest of all consumers”,⁸ would not be able to adequately represent HREA’s interests in this docket.

2. HREA Has Not Demonstrated that its Intervention in this Docket Would Not Unduly Broaden the Issues or Delay the Proceeding.

HAR § 6-61-55(b)(7) requires that motions to intervene make reference to “[t]he extent to which the applicant’s participation will broaden the issues or delay the proceeding.” With respect to this requirement, HREA’s Motion provides a one-word answer: “None.” Motion at 4. HREA’s response is conclusory and unsupported.

In addition, HREA’s only claimed “interests” in this docket are not reasonably pertinent to the ratemaking issues to be addressed in this proceeding and demonstrate that HREA’s stated interests will broaden the issues or delay the proceeding. For example, HREA’s stated “interests” relate to alleged “concerns about access to the electricity market, including appropriate and reasonable terms and conditions in power purchase agreements.” Motion at 3. The purpose of this docket, by contrast, is to examine a decoupling mechanism (in essence, a form of ratemaking) for the HECO Companies that separates its revenues and profits from electricity sales.

HREA has not demonstrated how “access to the electricity market” or the terms of “power purchase agreements” might be pertinent to the issue of ratemaking or revenue decoupling. Indeed, revenue decoupling involves severing the economic linkage between utility revenues and sales, and thus concerns the revenues received by a utility for provision of electricity to end-use consumers. By contrast, the interests of those “involved in and/or

⁸ Hawaii Revised Statutes § 269-51 (emphasis added).

considering manufacturing, marketing, selling, installing, and maintaining renewables in Hawaii” pertain to the sale of electricity by suppliers to the utility, and thus are not reasonably pertinent to revenue decoupling.⁹

In light of this docket’s focus on revenue decoupling and ratemaking issues, permitting HREA to explore its interests in “access to the electricity market” could only serve to broaden the issues and delay these proceedings. Given the expeditious procedural schedule that the Commission has set for this docket (e.g., the 60-day deadline for a joint proposal on decoupling; and the Commission’s goal of issuing a decision approximately in the summer of 2009), this should be of particular concern in this instance.¹⁰

3. HREA Has Not Demonstrated that Its Intervention Will Assist in the Development of a Sound Record Regarding Decoupling.

HAR § 6-61-55(b)(6) requires that motions to intervene make reference to “[t]he extent to which the applicant’s participation can assist in the development of a sound record[.]” With respect to this requirement, HREA’s argument provides a single sentence: “HREA will provide the resources, including professional expertise and time, necessary for effective representation, and to assist in the development of a sound evidentiary record.” Motion at 4. This contention is also conclusory, and unpersuasive, as the Motion does not indicate how HREA could contribute to a discussion on developing and implementing a decoupling mechanism.

For example, the Motion does not specifically identify any of HREA’s potential witnesses, or any experience with decoupling and/or ratemaking issues that might assist in the development of a sound record. In addition, HREA has not discussed or provided any examples

⁹ HREA’s Motion specifies Docket No. 2008-0273 on its cover sheets which is the feed-in tariffs proceeding. Although HREA’s Motion seeks intervention in the decoupling proceeding, its interests appear more relevant to the feed-in tariffs proceeding.

¹⁰ Notably, at least eight motions to intervene have been filed to date in this docket by parties including: Life of the Land; Haiku Design and Analysis; Blue Planet Foundation; Hawaii Holdings, LLC; HREA; the State of Hawaii Department of Business, Economic Development, and Tourism; Hawaii Solar Energy Alliance, and Tawhiri Power LLC.

of any substantive expertise, knowledge or experience that it may possess regarding decoupling, which as discussed above, involves severing the economic linkage between utility revenues and sales. Accordingly HREA has not demonstrated that it will assist in the development of a sound record regarding the technical topic of revenue decoupling.

Without referring to HAR § 6-61-55(b)(6), the "Background" section of the Motion, points out that "[i]ndividual HREA members" have participated as intervenors in dockets generally related to renewable energy, integrated resource planning, competitive bidding, demand-side management/energy efficiency, distributed generation and renewable energy infrastructure. See Motion at 2-3. This claim does not demonstrate that HREA could assist in the development of a sound record regarding decoupling. HREA's general interest in renewable energy does not demonstrate that HREA possesses expertise, knowledge or experience regarding revenue decoupling or ratemaking.

II. CONCLUSION

Based on the foregoing, the HECO Companies respectfully request that HREA's Motion to Intervene be denied.

DATED: Honolulu, Hawaii, November 21, 2008.



THOMAS W. WILLIAMS, JR.
PETER Y. KIKUTA
DAMON L. SCHMIDT

Attorneys for
HAWAIIAN ELECTRIC COMPANY, INC.,
HAWAII ELECTRIC LIGHT COMPANY, INC., and
MAUI ELECTRIC COMPANY, LIMITED

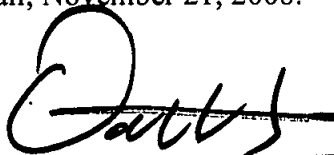
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC., AND MAUI ELECTRIC COMPANY, LIMITED'S MEMORANDUM IN OPPOSITION TO MOTION TO INTERVENE OF HAWAII RENEWABLE ENERGY ALLIANCE, together with this CERTIFICATE OF SERVICE, as indicated below by hand delivery and/or by mailing a copy by United States mail, postage prepaid, to the following:

Hand Delivery	U.S. Mail	
X		Catherine Awakuni, Executive Director Department of Commerce and Consumer Affairs Division of Consumer Advocacy 335 Merchant Street, Room 326 Honolulu, Hawaii 96813
	X	Randall J. Hee, P.E. President and CEO Kauai Island Utility Cooperative 4463 Pahe'e Street, Ste. 1 Lihue, HI 96766-2000
	X	Timothy Blume Michael Yamane Kauai Island Utility Cooperative 4463 Pahe'e Street, Ste. 1 Lihue, HI 96766
X		Kent D. Morihara, Esq. Kris N. Nakagawa, Esq. Rhonda L. Ching, Esq. Morihara Lau & Fong LLP 841 Bishop Street, Ste. 400 Honolulu, HI 96813

Hand Delivery	U.S. Mail	
	X	Warren S. Bollmeier, II, President Hawaii Renewable Energy Alliance 46-040 Konane Place 3816 Kaneohe, HI 96744

DATED: Honolulu, Hawaii, November 21, 2008.



THOMAS W. WILLIAMS, JR.
PETER Y. KIKUTA
DAMON L. SCHMIDT

Attorneys for
HAWAIIAN ELECTRIC COMPANY, INC.
HAWAII ELECTRIC LIGHT COMPANY, INC., and
MAUI ELECTRIC COMPANY, LIMITED

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